

REMARKS**I. Detailed Action*****A. Elections/Restrictions***

The Examiner has acknowledged Applicant's election of Group I, claims 1-6 and 10 and SEQ ID NO: 22 with traverse. Applicants acknowledge that the Examiner has allowed rejoinder of SEQ ID NO: 5, 10 and 22 in view of the amendment to the claims to recite "95%" sequence identity; they can now be examined on the merits without search burden because the sequences have been searched in parent application 09/352,168, now U.S. Patent No: 6,211,435. Applicants have amended the claims accordingly. The Applicant's argument that Group I and Group II are related because the process of using the nucleic acid sequences is directed to degrading fumonisin has been deemed to be non-persuasive. Applicants will cancel all other claims once the claimed invention is in condition for allowance. Applicants acknowledge that the election/restriction has been made FINAL.

B. Drawings

Applicants acknowledge that no drawings will be filed with this application.

C. Oath/Declaration

The Examiner notes that the oath or declaration is defective because it does not state that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in 37 CFR § 1.56 and that a new oath or declaration in compliance with 37 CFR § 1.67(a) is required. Applicants thank the Examiner for pointing out this inadvertent mistake and have submitted a new declaration in compliance with 37 CFR § 1.67(a).

D. Claim Objections

Claim 6 stands objected to for stating "the cell is". Applicants have amended the claim to read "the plant cell is from a plant" as suggested by the Examiner. Applicants wish to thank the Examiner for this suggested language.

Claim 10 stands objected to for stating "purifying". Applicants have amended the claims to read "isolating and purifying" as suggested by the Examiner. Applicants wish to thank the Examiner for this suggested language.

II. Claim Rejections - 35 U.S.C. § 112, First Paragraph

Claims 1-6 and 10 stand rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventor had possession of the claimed invention at the time the application was filed. The Examiner further states that the claims do not recite functional language.

Applicants have amended the claims by inserting the Examiner's suggested language, thereby alleviating the rejection. Applicants thank the Examiner for the suggested language.

III. Double Patenting

Claims 1-6 and 10 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 6,211,435. The Examiner states that although the conflicting claims are not identical, they are not patentably distinct from each other because the invention claimed in both the application and the issued patent encompasses SEQ ID NO: 5, 10 or 22, transformed plant cell comprising said polynucleotide, and a method for making a recombinant APAO enzyme. The Examiner states the instantly claimed invention encompasses the invention claimed in the issued patent.

Applicants are herein submitting a Terminal Disclaimer in compliance with 37 CFR § 1.321(c), which disclaims any term of a patent issuing from this application which would extend beyond the term of U.S. Patent No. 6,211,435. Therefore, Applicants submit that the claims are in proper form for allowance and respectfully request reconsideration and withdrawal of the obviousness-type double patenting rejection.


IV. Conclusion

In conclusion, Applicants submit in light of the above amendments and remarks, the claims as amended are in a condition for allowance, and reconsideration is respectfully requested. If it is felt that it would aid in prosecution, the Examiner is invited to contact the undersigned at the number indicated to discuss any outstanding issues.

Applicants request that the fee in the amount of \$110.00 for a terminal disclaimer under 37 C.F.R. § 1.20(d) be charged to Deposit Account number 26-0084. No other fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

Reconsideration and allowance is respectfully requested.

Respectfully submitted,



Lila A. T. Akrad, Reg. No. 52,550
McKEE, VOORHEES, & SEASE
801 Grand Avenue, Suite 3200
Des Moines, Iowa 50309-2721
Phone No. (515) 288-3667
Fax No. (515) 288-1338
CUSTOMER NO: 27142

RH / LATA

Attorneys of Record